

ELLIS BUSCHMAN

IBLA 84-332

Decided June 26, 1985

Appeal from a decision of the Oregon State Office, Bureau of Land Management, declaring the Lost Nugget mining claim abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Recordation

BLM may properly declare an unpatented mining claim abandoned and void for failure to file timely with BLM a copy of the notice of location of the claim, pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1982).

APPEARANCES: Ellis Buschman, pro se.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Ellis Buschman has appealed from a decision of the Oregon State Office, Bureau of Land Management (BLM), dated January 20, 1984, declaring the Lost Nugget mining claim abandoned and void for failure to file timely with BLM a copy of the notice of location of the claim, pursuant to section 314(b) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(b) (1982).
1/

On May 13, 1983, appellant filed a copy of his affidavit of assessment work done between December 1, 1982, and March 11, 1983, on the Lost Nugget claim with BLM pursuant to section 314(a) of FLPMA, 43 U.S.C. § 1744(a) (1982). The affidavit had been filed with the Douglas County recorder on

1/ Consideration of this appeal was stayed pending judicial review of the mining claim recordation provisions of FLPMA. The constitutionality of these provisions was recently upheld by the Supreme Court. United States v. Locke, 105 S. Ct. 1785 (1985).

May 9, 1983, but did not indicate when the claim had been located. By letter dated June 28, 1983, BLM requested appellant to indicate the appropriate BLM serial number associated with the claim, in order to ensure proper filing of the affidavit. 2/ On July 11, 1983, appellant responded that he "do[es] not have a number from B.L.M."

In its January 1984 decision, BLM declared appellant's mining claim abandoned and void because it had not been "recorded" with BLM, and rejected appellant's 1983 affidavit of assessment work filed for recordation. On appeal, appellant contends that he has a "right" to the claim because it is recorded with the county.

[1] Section 314(b) of FLPMA requires the owner of an unpatented mining claim to file with BLM a copy of the notice of location of the claim within the 3-year period following October 21, 1976 (claims located prior to October 21, 1976), or within 90 days after the date of location of the claim (claims located after October 21, 1976). The record does not indicate when appellant's claim was located. It seems clear that the claim was located on or before December 1, 1982, the date on which appellant began assessment work. However, the record does not contain a copy of appellant's notice of location. Appellant has simply not complied with section 314(b) of FLPMA. 3/

Under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1982), failure to file the required instrument in accordance with the statute "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." In such circumstances, the claim "shall be void." 43 CFR 3833.4(a). We have long held that the statute is self-operative and that Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Homestake Mining Co., 77 IBLA 235 (1983), and cases cited therein.

Accordingly, we conclude BLM properly declared appellant's mining claim abandoned and void. Harold A. Hinkle, 77 IBLA 152 (1983); William E. Day, 72 IBLA 364 (1983).

2/ BLM also stated that:

"If you do not have a BLM 'OR MC' number, and have not recorded your claim with this office within the specified time periods prescribed, the claims are considered abandoned and void (reference enclosed Circular No. 2516A, 43 CFR 3833.4).

"Abandoned claims may be relocated under applicable mining regulations subject to existing rights and provided the lands are open to mining. The instruments for your new claim should be recorded under state law and then must be filed with BLM within 90 days after the date of location of the new claim under the requirements of 43 CFR 3833.1-2(a)."

3/ Indeed, in his July 1983 letter to BLM appellant essentially admitted that a copy of the location notice for his claim had not been filed with BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

R. W. Mullen
Administrative Judge

